INTHE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

F.A.O. No. 611 of 1992
Date of decision November 21, 2007

1. **Mohan Lal s/o Mata Ram, Dhanak Harijan, r/o Gali No.4, Jawahar Nagar, Hissar.**
2. **Balbir s/o Mata Ram Dhanak Harijan, r/o Gali No.4, Jawahar Nagar, Hissar.**

..... Appellants

Versus

1. **Smt. Vidhya Devi wd/o Dharam Singh**
2. **Krishan**
3. **Tara Devi**
4. **Lachhmi Devi**
5. **Kuldip (All residents of village Ladvi Tehsil and Distt. Hissar.**
6. **The New India Assurance Company Ltd. SCO 36-37, Sector 17-A, Chandigarh through its Regional Manager.**

..... Respondents

CORAM: HON'BLE MR. JUSTICE SHAM SUNDER

Present: Mr. Neeraj Khanna, Advocate
for the appellants.

Mr. Manmohan,Advocate
for the respondents.

Ms. Radhika Suri, Advocate
for the Insurance Company.

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Sham Sunder, J.

This appeal was originally preferred by Mohan Lal (driver), Balbir Singh (owner) and New India Assurance Company Ltd. (Insurer) against the judgment dated 13.12.1990, rendered by the Motor Accident Claims Tribunal, Hisar (hereinafter referred to as the 'Tribunal') vide which it accepted the claim petition, and granted compensation of Rs.Two lacs, in favour of the claimants, with interest at the rate of 12% per annum, holding all the respondents jointly and severally liable, to pay the

same. During the pendency of the appeal, a civil miscellaneous application was filed and the New India Assurance Company Ltd., one of the appellants, was transposed as respondent No.6, vide order dated 6.7.2007.

2. On 28.12.1988, Dharam Singh son of Vijay Singh, aged about 33 years, selected for the post of Ziledar, undergoing training and getting Rs.550/- per month, as stipend, was going from Parijat Cinema Chowk towards old Grain Market, Hisar, and when reached near the Western Gate of the said market, Truck No. HRF 3937, came from the back side. It was being driven in a rash and negligent manner. The driver of the truck, hit Dharam Singh, from the back, as a result whereof, he fell down, on small pieces of stone (rorri) and was dragged to some distance. The accident was witnessed by Diwan Singh and Mahavir Singh. The driver of the truck, ran away, with the truck. Dharam Singh suffered multiple injuries. He was taken to Civil Hospital, Hisar, by Mahavir Singh and Dewan Singh and was got admitted therein, where he died soon thereafter. It was stated that the deceased was the only earning member in the family of the claimants, namely Vidya Devi, widow, Krishna, Tara Devi, Lachhmi Devi and Kuldip minor son and daughters. Accordingly, the claim petition under the Motor Vehicles Act, 1939, was filed, claiming compensation, in the sum of Rs.4 lacs.

3. Respondents No. 1 and 2, the driver and owner respectively of the truck, in question, in their joint written statement, stated that a false criminal case, was registered against respondent No.1, with regard to the said accident. It was further stated that even the criminal case was not got registered, with regard to the involvement of truck No. HRF 3937, in the accident, but was got registered regarding the

involvement of truck No. HRP 3937. It was further stated that no accident, as alleged in the petition, took place with truck No. HRF 3937. On the other hand, it was stated that truck No. HRF 3937 was under repair, and became road-worthy, only on the night of 28.12.1988. It was further stated that the deceased might have sustained injuries, by falling on small pieces of stones, by driving his own vehicle, or on account of rash or negligent driving of some other vehicle. The remaining averments were denied, being wrong.

4. Respondent No.3, the New India Assurance Company,in its written statement, pleaded that the claim petition was barred by time. It was stated that truck No. HRF 3937 was not insured with the said Company, at the time of the alleged accident. On the other hand, it was stated that it was on 29.12.1988, after the date of the alleged accident, that the cover note of the policy, was got ante-dated, in collusion with the agent of the Company, and, as such, the Company was not liable to pay any compensation. The remaining averments, were denied being wrong.

5. In the replication, filed by the appellants, they re-asserted all the averments, contained in the petition, and controverted those, contained in the written statements.

6. On the pleadings of the parties, the following issues were struck:-

"1.Whether Dharam Singh died in a motor vehicle accident caused by rash and negligent driving of truck No. 3937 driven by respondent No.1 Mohan Lal?OPP

2. To what amount of compensation if any, the petitioners are entitled to and from whom?OPP

3. Whether the Insurance Co. is not liable to pay the claim for the reasons mentioned in the preliminary objections?OPP

4. Relief."

7. After hearing the learned Counsel for the parties, and, on going through the evidence, on record, the Tribunal accepted the petition, and awarded the compensation, in the sum of Rs.2 lacs, in favour of the claimants, as stated above.

8. Feeling aggrieved, against the judgment dated 13.12.1990 of the Tribunal, the instant appeal, as stated above, was filed by the appellants.

9. Notice of the appeal, was given to the respondents, who put in appearance, and contested the same.

10. I have heard the learned counsel for the parties, and have gone through the record of the case, carefully.

11. Learned counsel for the appellants, at the very outset, contended that the Tribunal was completely wrong, in coming to the conclusion, that Dharam Singh died in a motor vehicle accident on account of the rash or negligent driving of truck No. HRF 3937, by Mohan Lal, driver thereof. He further submitted that no substantive evidence regarding the number of the truck, with which the alleged accident took place and the name and identity of the driver, who was driving the same at the relevant time, was produced by the claimants, in the claim petition. He further contended that, thus, truck No. HRF 3937,and Mohan Lal, driver, were not at all connected with the accident, resulting into the death of Dharam Singh. He further contended that the findings of the Tribunal, in this regard, are based on mere conjectures and surmises. The contention of the learned

counsel for the appellants, in this regard, appears to be correct, as would be discussed hereinafter. Dewan Singh-PW-3, is one of alleged eye-witnesses, who was examined by the claimants. It was stated by him, in his statement, that on 28.12.1988 at 1.15 P.M, he and Mahabir Singh, an employee of CONFED were present, at the gate of old Grain Market of Hisar. They noticed Dharam Singh coming,on the left side of Parijat Cinema, Hisar and, as soon as, he reached near the said gate of old Grain Market, a truck came from behind, and struck against him, from its front left portion, as a result whereof, he fell down, and was dragged to some distance. He further stated that the truck was being driven by the driver, at a high speed, and in a negligent manner. It was further stated by him, that, thereafter, they took Dharam Singh in a rickshaw, to the Civil Hospital, and got him admitted, in the emergency ward, where he died, on account of the injuries, sustained by him, in the said accident. Dewan Singh did not state even a single word, in his statement, while appearing as, PW-3, as to what was the number of the truck, which was being driven rashly or negligently, which allegedly struck against Dharam Singh resulting into injuries on his person and leading to his death. He was also conspicuously silent, in his statement, as to who was the driver of the truck at the relevant time. Had this witness allegedly seen the accident at 1.15 P.M., on 28.12.1988, he would have certainly disclosed the number of the truck, and the name or identity of the driver, driving the same, at the relevant time. From his substantive evidence, it is not proved, that the accident took place, on account of the rash or negligent driving of truck No. HRF 3937, by Mohan Lal, driver thereof. The statement of this witness is completely vague. No doubt, in Ex.P-2, copy of DDR No. 25 dated 28.12.1988, which was

allegedly recorded, on the statement of Dewan Singh, the number of the truck is written as HRF 3937, but the name of the driver is not recorded therein. However, it is evident, from the judgment of the Tribunal, that it had summoned the original file of challan, under section 304-A IPC, and found that in the FIR, truck No. HRP 3937 was mentioned but in the challan, it was written that it was truck No. HRF 3937. There was, therefore, dispute with regard to the truck, with which the alleged accident took place. It may be stated here, that the FIR does not constitute a substantive evidence. FIR is only a previous statement of the author, which can be used for the purpose of corroboration or contradiction, if he appears, in the Court, as a witness. In the face of the substantive evidence of Dewan Singh, PW-3, wherein there is no indication of the number of the truck, and the name of the driver, who was driving the same, at the time of the alleged accident, no reliance, whatsoever, can be placed, on the copy of the DDR Ex.P-2. In other words, copy of the DDR, cannot be a substitute, for the substantive evidence of Dewan Singh, PW-3. The Investigating Officer, who, challaned Dewan Singh was not examined, to find out, as to on the basis of which material, he came to the conclusion, that the accident took place, with Truck No. HRF 3937, when it was allegedly being driven rashly or negligently by Mohan Lal, driver thereof. Mahabir Singh, the other witness, who allegedly witnessed the accident, was not examined, by the claimants, to prove as to with which truck the accident allegedly took place, and who was the driver thereof, at the relevant time. No doubt, in the Post Mortem Report, copy whereof, is Ex.P-3, the names of Mahabir Singh and Dewan Singh are recorded, who got admitted Dharam Singh, in the hospital. However, this document did not, in any way, go to prove that the

accident took place with truck No. HRF 3937. It is, no doubt, true that the strict principles of Civil Procedure Code, and the Evidence Act are not applicable to the enquiries, conducted in the petitions, for compensation, under the Motor Vehicles Act. If some evidence to prove certain facts is produced, that can be said to be sufficient to establish the same. As stated above, in the instant case, no substantive evidence, whatsoever, to prove the identity of the driver, and the number of the truck which was allegedly involved in the accident, was produced. The observations of the Tribunal, in its judgment, under Issue No.1, to the effect, that the conduct of the driver, by taking away the truck, showed that he believed in hit and run policy, and, therefore, the truck, in question, was involved in the accident, when the same was being driven rashly or negligently by Mohan Lal, are merely based on conjectures and surmises. Even, Mohan Lal, the driver of the truck when appeared as, RW-1, in clear cut terms stated that the truck in question, was not involved in the accident. It is not known, as to on the basis of which evidence, the Tribunal came to the conclusion, that the accident took place, on account of the rash or negligent driving of Truck No. HRF 3937 by Mohan Lal, driver thereof. It is, therefore, held that Dharam Singh did not die, in a motor vehicle accident, on account of the rash or negligent driving of truck No. HRF 3937, by Mohan Lal-appellant No.1. The findings of the trial Court, on issue No.1, being incorrect are reversed.

12. Since, the accident did not take place, on account of rash or negligent driving of Truck No. HRF 3937, by Mohan Lal-appellant No.1, resulting into injuries on the person of Dharam Singh, and leading to his death, the claimants were not entitled to any compensation. The findings of

the trial Court on issue No. 2, that the claimants were entitled to compensation, in the sum of Rs. 2 lacs, being incorrect, are reversed.

13. In view of the reasons recorded hereinbefore, the instant appeal is accepted with costs. The judgment/award dated 13.12.1990, rendered by the Tribunal is set aside, and the claim petition shall stand dismissed.

November 21, 2007 **(SHAM SUNDER)**
archana **JUDGE**